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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,469	08/01/2003	Michael A. Wack	DEP673-CIP	4800
28078 7590 10/09/2007 MAGINOT, MOORE & BECK, LLP CHASE TOWER 111 MONUMENT CIRCLE SUITE 3250 INDIANAPOLIS, IN 46204			EXAMINER RAMANA, ANURADHA	
			ART UNIT 3733	PAPER NUMBER
			MAIL DATE 10/09/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/633,469

Applicant(s)

WACK ET AL.

Examiner

Anu Ramana

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-9, 11-18, 20, 22-27 and 30-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-9, 11-18, 20, 22-27 and 30-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 8/1/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6-9, 11-18, 20 and 30-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Bono (US 5,954,722).

Bono discloses a fracture repair system including: a plate 10; a bushing 16 with a spherical exterior surface; a first screw or “pin” or “head attachment component” 18 with a cap portion; and a second screw or “body attachment component” 18 with a cap portion (Figs. 5 and 6, col. 3, lines 48-67, cols. 4-5 and col. 6, lines 1-30).

Regarding claims 13, 16, 17 and 20, Bono discloses plate 10 to have multiple holes with bushings 16 (Fig. 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-9, 11-18, 20, 22-27 and 30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weaver et al. (WO 01/19267 A1) in view of Wagner et al. (US 6,030,389).

Weaver et al. disclose a fracture repair system including: a first plate 50; a second plate 80; non-locking screws or pins 10 (or “movable body attachment component”) with cap portions 12; and locking screws or pins 20 (or “rigid body

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attachment component") with cap portions 22 wherein combining locking and non-locking screws in the same bone plate provides mixed fixation (Figs. 1-2, 7-8 and 20-21, page 8, lines 12-22 and pages 9-10).

Weaver et al. disclose all elements of the claimed invention except for a bushing with a generally spherical exterior surface.

Wagner et al. teach providing a bushing with a curved or generally spherical exterior surface in a borehole of a plate so that a screw may be rotated and moved to various positions within the borehole (Figs. 2-4 and col. 6, lines 34-67 and col. 7, lines 1-14).

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a bushing with a generally spherical exterior surface, as taught by Wagner et al., in a borehole of either of the Weaver et al. plates 50, 80 in the system of the combination of Weaver et al. and Wagner et al., to enable rotation and movement of a screw to various positions within the borehole.

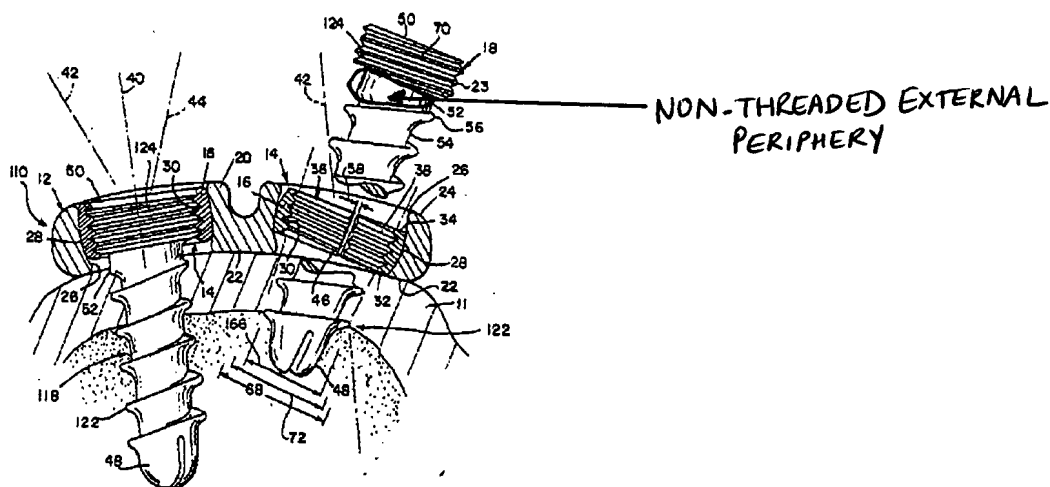
Response to Arguments

Applicant's arguments submitted under "REMARKS" in the response filed on July 16, 2007 have been fully considered.

The Examiner is withdrawing the double patenting rejections since a Terminal Disclaimer has been filed in the copending application, 10/100,387.

Applicants' arguments with respect to the rejections of claims under 35 USC 102(b) as being anticipated by Bono (US 5,954,722), are not persuasive. The Examiner is interpreting a pin to mean a cylindrical piece. It is noted that during examination, claims must be interpreted as broadly as their terms reasonably allow. This means that the words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification. In re Zletz, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

The Examiner reiterates that at least a portion of the Bono screw stem has a non-threaded external periphery (see marked up Fig. 6 on the following page).



Applicants' argument on page 45 that neither Weaver nor Wagner, individually or in combination, teach or suggest the use of a pin having a non-threaded external periphery is not persuasive. Weaver et al. show a portion of their screw stem to have a non-threaded external periphery (see Figs. 1 and 9). Wagner et al. also show a screw or pin having a non-threaded external periphery (see Figs. 3, 4 or 7). The Examiner's interpretation of structure connoted by a pin has been previously discussed.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (571) 272-4718. The examiner can normally be reached Monday through Friday between 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AR

October 1, 2007


ANURADHA RAMANA
PRIMARY EXAMINER
TECHNOLOGY CENTER 3700